

21 C.J.S. Courts § 265

Corpus Juris Secundum | May 2023 Update

Courts

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VIII. Concurrent and Conflicting Jurisdiction

A. Courts of Same State

2. Transfer of Cases

b. Mode of and Procedure for Transfer; Denial of Transfer

§ 265. Time for request of transfer of case

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Courts](#)  487(3)

The time at which an application for a transfer may be made is governed largely by constitutional, statutory, or rules provisions.

The time at which an application for a transfer may be made is governed largely by constitutional,¹ statutory,² or rules provisions.³ Typically, such provisions stipulate that an application for transfer must be made within the time for serving the answer or reply⁴ or not less than a specified number of days before the appearance date.⁵ Under a rule requiring the filing of a removal notice within the time for serving the answer or reply, it has been held that the notice must be filed by the day of the first appearance.⁶

A small claims defendant's motion for transfer should not be dismissed as untimely based on a strict interpretation of the rule requiring such motions to be filed not less than a specified number of days before the appearance date, where the motion is filed after the defendant initially appears, but more than the required number of days before the continued appearance date.⁷ Given the liberal interpretation to be afforded procedural rules, when a small claims court continues the appearance date, the court must also recognize the defendant's right to file a transfer motion so long as that motion is filed at least within the required number of days prior to the continued appearance date.⁸

Time of filing initial pleadings.

Statutes or rules governing specified proceedings sometimes require that a request for transfer must be filed at the time when the initial pleadings are filed.⁹ Under a statute providing that a transfer demand by a party to a will contest must be made at the time of the filing of the initial pleading, the transfer motion must be made when notice of the will contest is filed.¹⁰ A will contestant's subsequent filing of an amended complaint after the probate court grants a new trial does not permit the contestant to request a transfer of the will contest at this later time.¹¹

CUMULATIVE SUPPLEMENT

Cases:

In order to effect the removal of an administration of an estate from the probate court to the circuit court, the party seeking to remove the administration of the estate must file in the circuit court, after the estate has been admitted to probate and letters testamentary or letters of administration issued by the probate court but before final settlement thereof, a petition asserting that the petitioner is such heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed and that, in the opinion of the petitioner, such estate can be better administered in the circuit court than in the probate court. [Ala. Code § 12-11-41](#). [Daniel v. Moye](#), 224 So. 3d 115 (Ala. 2016).

[END OF SUPPLEMENT]

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Footnotes

1

Me.—[Toothaker v. Pennell](#), 106 Me. 188, 76 A. 488 (1909).

- 2 Ala.—*Newman v. Savas*, 878 So. 2d 1147 (Ala. 2003).
- 3 Me.—*City of Biddeford v. Holland*, 2005 ME 121, 886 A.2d 1281 (Me. 2005).
- 4 Me.—*City of Biddeford v. Holland*, 2005 ME 121, 886 A.2d 1281 (Me. 2005).
- 5 Colo.—*Semental v. Denver County Court*, Small Claims Div., 978 P.2d 668 (Colo. 1999).
- 6 Me.—*City of Biddeford v. Holland*, 2005 ME 121, 886 A.2d 1281 (Me. 2005).
- 7 Colo.—*Semental v. Denver County Court*, Small Claims Div., 978 P.2d 668 (Colo. 1999).
- 8 Colo.—*Semental v. Denver County Court*, Small Claims Div., 978 P.2d 668 (Colo. 1999).
- 9 Ala.—*Newman v. Savas*, 878 So. 2d 1147 (Ala. 2003).
- Tex.—*Ex parte Bowers*, 671 S.W.2d 931 (Tex. App. Amarillo 1984).
- 10 Ala.—*Newman v. Savas*, 878 So. 2d 1147 (Ala. 2003).
- 11 Ala.—*Newman v. Savas*, 878 So. 2d 1147 (Ala. 2003).

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